

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:01
PLR-116428-14

Date:
September 09, 2014

Legend

X =

State =

Date 1 =

Date 2 =

Trust 1 =

Trust 2 =

Dear :

This responds to a letter dated April 10, 2014, and subsequent correspondence submitted on behalf of X by X's authorized representative, requesting inadvertent invalid election relief under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated under the laws of State on Date 1. X filed a timely election under § 1362(a) to be treated as an S corporation effective Date 2. On Date 2, Trust 1 and Trust 2 each owned shares of X stock. The sole income beneficiaries of Trust 1 and Trust 2 filed elections under § 1361(d)(2) to be treat Trust 1 and Trust 2 as qualified subchapter S trusts (QSSTs) effective Date 2; however, Trust 1 and Trust 2 did not meet the requirements of a QSST within the meaning of § 1361(d)(3). X represents that Trust 1 and Trust 2 were eligible to be electing small business trusts (ESBTs) within the meaning of § 1361(e) effective Date 2, but the trustees of Trust 1 and Trust 2 mistakenly failed to file an election to treat Trust 1 and Trust 2 as ESBTs. Therefore, Trust 1 and Trust 2 were not eligible shareholders and, as a result, X's S corporation election was ineffective.

X represents that the circumstances resulting in the ineffectiveness of X's S corporation election were inadvertent and not motivated by tax avoidance or retroactive tax planning. Additionally, X represents that X and its shareholders have filed their federal income tax returns consistent with having a valid S corporation election in effect for X as of Date 2. X and its shareholders agree to make such adjustments (consistent with the treatment of X as an S corporation) as may be required by the Secretary.

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1)(B) provides that, for purposes of subchapter S, the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 1361(d)(1)(A) provides that a QSST, within the meaning of § 1361(d)(3), may be a shareholder for purposes of § 1361(b)(1)(B). The beneficiary of the trust makes the QSST election pursuant to § 1361(d)(2).

Section 1361(c)(2)(A)(v) provides that an ESBT, within the meaning of § 1361(e)(1), may be a shareholder for purposes of § 1361(b)(1)(B). The trustee of the trust makes the ESBT election pursuant to § 1361(e)(3). Section 1.1361-1(m)(2)(i) provides that the trustee of an ESBT must make the ESBT election by signing and filing, with the service center where the S corporation files its income tax return, a statement that meets the requirements of § 1361-1(m)(2)(ii).

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in such termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in such termination, steps were taken so that the corporation for which the termination occurred is a small business corporation, and (4) the corporation for which the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of such corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such termination, such corporation shall be treated as an S corporation during the period specified by the Secretary.

Based solely on the information submitted and representations made, we conclude that X's S corporation election was inadvertently invalid on Date 2 because X had ineligible shareholders. We further conclude that, pursuant to the provisions of

§ 1362(f), X will be treated as an S corporation from Date 2 and thereafter, provided that X's election to be an S corporation was not otherwise ineffective and was not terminated under § 1362(d).

This ruling is conditioned on (1) the trustees of Trust 1 and Trust 2 file ESBT elections effective Date 2 with the appropriate service center; and (2) X and each of its shareholders filing any amended returns and making such adjustments necessary to properly reflect the reporting of X's items of S corporation income, including the filing amended returns by Trust 1 and Trust 2 consistent with the treatment of the trusts as ESBTs. The ESBT election and the amended returns must be filed within 120 days following the date of this letter and a copy of this letter should be attached to any such elections or returns. If X or its shareholders fail to treat themselves as described above, this ruling is null and void.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, no opinion is expressed or implied regarding X's eligibility to be an S corporation or Trust 1 or Trust 2's eligibility to be an ESBT.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Pursuant to a power of attorney on file, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 3
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this Letter
Copy for § 6110 purposes